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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION 2

In re NATHAN J., a Person Coming Under  
the Juvenile Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

NATHAN J.,

Defendant and Appellant.

A143721

(Contra Costa County  
Super. Ct. No. J12-00735)

**INTRODUCTION**

A juvenile was adjudicated a ward of the court following a no contest plea to two counts of annoying and molesting a child under the age of 18. Eight months after the juvenile court terminated probation as successful and dismissed the matter, the Probation Department petitioned the court to seal the juvenile's record pursuant to Welfare and Institutions Code section 781. The juvenile court denied the petition and the juvenile timely appealed. We conclude that the juvenile court abused its discretion because, as the Attorney General concedes, the court denied the petition based solely on a misunderstanding of the juvenile's underlying offense. Accordingly, we reverse and remand this matter to the juvenile court.

## **FACTUAL AND PROCEDURAL BACKGROUND**

On May 7, 2012, the Contra Costa District Attorney filed a wardship petition alleging that Nathan J., a 16-year-old, committed a lewd act on a child under the age of 14 in violation of Penal Code section 288, subdivision (a). The petition was based on a report that Nathan had, on more than 10 occasions, picked up his five-year-old cousin, placed his hand under her pants, and sometimes inside her underwear. On September 27, 2012, the district attorney amended the petition to add two misdemeanor counts of annoying or molesting a child under the age of 18 in violation of Penal Code section 647.6. That same day, Nathan pleaded no contest to the two misdemeanor counts, and the district attorney moved to dismiss the felony count under Penal Code section 288. The juvenile court adjudged Nathan a ward of the court and placed him on probation in his home.

On December 30, 2013, the juvenile court terminated Nathan's probation as successful. Nathan's counsel requested that Nathan's juvenile record be sealed given the fact that Nathan was then over 18 years old and had done well under probation. The juvenile court declined this request and had the following exchange with Nathan's counsel:

“THE COURT: There is a whole protocol about that.

“[JUVENILE'S COUNSEL]: I talked to him about that.

“THE COURT: You have to file at this point, but I would say—I would wait a bit. It's too early to file it, because I would not accept it at this time.

“[JUVENILE'S COUNSEL]: How long would you recommend?

“THE COURT: I need a couple of years to see how he does as an adult.

“These—although misdemeanors—have some serious charges, and I want to make sure he's doing well.

“So I am not saying it won't happen, and it would, but—first of all, this is not the proper procedure to do it.”

On August 25, 2014, the Probation Department filed a petition to seal Nathan's juvenile record pursuant to Welfare and Institutions Code section 781.<sup>1</sup> The petition noted that Nathan had no adult criminal record, that he was a full-time community college student, and that he was employed as a line serviceman at a local company. The petition concluded by stating that "Nathan successfully completed his juvenile probation and has not committed any new law violations as an adult. Nathan is both eligible and suitable to have his juvenile record sealed."

Following a hearing on October 8, 2014, the juvenile court denied probation's petition with prejudice. After hearing from Nathan's counsel, the juvenile court asked: "Was the victim of this [Penal Code section] '288' five years old?" After being told the victim was five years old and Nathan had been 16, the juvenile court stated:

"THE COURT: I don't think this is appropriate to seal. I'm sorry.

"If I gave you some other thoughts last time the—I don't know—I don't remember it—I know that I terminated—he did successfully complete probation."

Nathan's counsel reminded the juvenile court that it had previously rejected Nathan's request to seal because it was too early at that time, but had suggested the request should be renewed at a later date. The court responded by stating:

"THE COURT: Uh-huh.

"I'm sorry. I don't find this appropriate to seal.

"I don't know what I was thinking before if I said that. Perhaps I did not have all the information, but I do not find this is appropriate to seal.

"I'm not going to seal it, period.

"[JUVENILE'S COUNSEL]: So when can it be revisited, then?

"THE COURT: I'm not revisiting it. I do not think it's appropriate to seal this record.

"I think the crime is so egregious I do not find it appropriate to seal."

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<sup>1</sup> All subsequent code section references are to the Welfare and Institutions Code unless otherwise indicated.

## DISCUSSION

Section 781, subdivision (a) provides,<sup>2</sup> in relevant part: “In any case in which a petition has been filed with a juvenile court to commence proceedings to adjudge a person a ward of the court . . . the person or the county probation officer may . . . at any time after the person has reached the age of 18 years, petition the court for sealing of the records . . . relating to the person’s case . . . . If, after hearing the court finds that since the termination of jurisdiction or action pursuant to Section 626, as the case may be, he or she has not been convicted of a felony or of any misdemeanor involving moral turpitude and that rehabilitation has been attained to the satisfaction of the court, it shall order all records, papers, and exhibits in the person’s case in the custody of the juvenile court sealed[.]”

We review the juvenile court’s order denying a motion to seal for abuse of discretion. (*In re J.W.* (2015) 236 Cal.App.4th 663, 668 (*J.W.*.)

Here, the juvenile court denied the petition to seal based solely on its perception that Nathan’s underlying offense was a felony violation of Penal Code section 288 and that this offense was particularly “egregious.” Before denying the motion to seal, the juvenile court inquired into the age of the “victim of the ‘288.’ ” However, there is no “ ‘288’ ” victim in this matter. While Nathan was originally charged with a felony violation of Penal Code section 288, this count was dismissed. Nathan pleaded no contest to two misdemeanor violations of Penal Code section 647.6. Because the juvenile

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<sup>2</sup> In 2014, the Legislature enacted section 786 which provides for the automatic and mandatory sealing of juvenile records where a “minor satisfactorily completes . . . a term of probation for any offense not listed in subdivision (b) of section 707.” This provision would appear to encompass Nathan’s case as he successfully completed his term of probation, and Penal Code section 647.6, the misdemeanor to which he pleaded no contest, is not listed in section 707, subdivision (b). However, section 786 became effective on January 1, 2015—approximately a year after the juvenile court dismissed Nathan’s wardship petition. (Cal. Const., art. IV, § 8, subd. (c)(1).) Nathan discusses section 786 in his opening brief, but the Attorney General argues that this section is inapplicable insofar as it did not become effective until 2015. Nathan never filed a reply brief addressing this argument and has not argued why section 786 should be applied retroactively. Accordingly, we do not address section 786 in this appeal.

court’s decision was based on an error regarding the nature of Nathan’s underlying offense, the juvenile court abused its discretion. (See *Horsford v. Board of Trustees of California State University* (2005) 132 Cal.App.4th 359, 393 [ “[A] reasoned decision based on the reasonable view of the scope of discretion is still an abuse of judicial discretion when it starts from a mistaken premise . . . .”]; see also *People v. Cluff* (2001) 87 Cal.App.4th 991, 997 [finding an abuse of discretion where “substantial evidence does not support the critical inference the court relied on in denying [a] motion to strike”].)

The question becomes one of remedy. Nathan asks us to reverse the juvenile court’s order and to seal his juvenile record. The Attorney General, by contrast, recommends that we remand this matter to the juvenile court. We agree with the Attorney General. As just discussed, section 781 grants the juvenile court the discretion to determine whether Nathan’s “rehabilitation has been attained to the satisfaction of the court.” (§ 781, subd. (a); *J.W., supra*, 236 Cal.App.4th at p. 668.) We will not make a factual determination regarding Nathan’s rehabilitation in the first instance.

#### **DISPOSITION**

The order denying the petition to seal is reversed, and the matter is remanded to the juvenile court for further proceedings consistent with this opinion.

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Miller, J.

We concur:

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Richman, Acting P.J.

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Stewart, J.